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**IN THE
COURT OF APPEALS OF INDIANA**

STANLEY ASHER,

Appellant,

vs.

MARY LOU ASHER,

Appellee.

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No. 32A01-0603-CV-89

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Robert W. Freese, Judge
Cause No. 32D01-0510-DR-157

August 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Stanley Asher (“Father”) appeals from the trial court’s post-dissolution order that modified his child support obligation. Father raises one issue for review, namely, whether the evidence is sufficient to support the trial court’s order.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 7, 2000, Father’s marriage to Mary Lou Asher (“Mother”) was dissolved by a decree from the Putnam Circuit Court. The decree incorporated a settlement agreement that addressed the division of property as well as custody of and support for the parties’ child, born August 29, 1994. The decree was subsequently modified by agreement in 2002 to require Father to pay \$110 per week in child support.

On March 1, 2005, Mother filed a petition to modify child support, and on April 26, 2005, she filed a petition to transfer the proceedings to another county. On September 21, 2005, the Putnam Circuit Court granted Mother’s motion after a hearing and over Father’s objection and transferred the case to Hendricks County. On December 2, 2005, Father filed his motion to modify child support. On January 9, 2006, the Putnam Superior Court (“the trial court”) held a hearing on the parties’ motions to modify child support and other pending matters.¹ The order issued after that hearing provides in relevant part:

10. The Court finds that [Father’s] last four year average income is \$73,587.75 and that he has earned substantially more in prior years.

¹ Each party also filed a rule to show cause or petition for a finding of contempt against the other, and Father sought a change of custody. Father has not appealed from the trial court’s orders regarding those issues.

11. Beginning January 13, 2006 and each Friday thereafter, [Father] shall pay by way of Income Withholding Order through the Clerk of the Court \$104.00 as support for [the parties' child]. . . .

Appellant's App. at 17. Father filed the present appeal.

DISCUSSION AND DECISION

Standard of Review

Our supreme court has addressed appellate court deference to trial court findings in family law matters, including findings of “changed circumstances” within the meaning of Indiana Code Section 31-16-8-1:

Whether the standard of review is phrased as “abuse of discretion” or “clear error,” this deference is a reflection, first and foremost, that the trial judge is in the best position to judge the facts, to get a feel for the family dynamics, to get a sense of the parents and their relationship to their children—the kind of qualities that appellate courts would be in a difficult position to assess. Secondly, appeals that change the results below are especially disruptive in the family law setting. And third, the particularly high degree of discretion afforded trial courts in the family law setting is likely also attributable in part to the “fluid” standards for deciding issues in family law cases that prevailed for many years.

The third of these reasons has largely fallen by the wayside as the Legislature and [the Supreme] Court have promulgated a series of statutes, rules, and guidelines—standards that bring consistency and predictability to the many family law decisions. But, the importance of first-person observation and avoiding disruption remain compelling reasons for deference.

We recognize of course that trial courts must exercise judgment, particularly as to credibility of witnesses, and we defer to that judgment because the trial court views the evidence firsthand and we review a cold documentary record. Thus, to the extent credibility or inferences are to be drawn, we give the trial court's conclusions substantial weight. But to the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible, and the trial court has no discretion to reach the wrong result.

MacLafferty v. MacLafferty, 829 N.E.2d 938, 940-41 (Ind. 2005) (alteration in original).

In the present case, the trial court made special findings in its order. When the trial court has entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. Staresnick v. Staresnick, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. Id. We review conclusions of law de novo. Id.

Child Support Modification

Father contends that the trial court abused its discretion when it “failed to determine that [his] income had been reduced to such an extent to require a reduction in his child support.” Appellant’s Brief at 1. Our review of child support modification orders is governed by Indiana Code Section 31-16-8-1, which states in relevant part:

Provisions of an order with respect to child support . . . may be modified or revoked. Except as provided in [Indiana Code Section 31-16-8-2], modification may be made only:

- (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
- (2) upon a showing that:
 - (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%)

from the amount that would be ordered by applying the child support guidelines; and

(B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Father argues that the trial court erred when it determined that his income had not been reduced from a \$75,000 salary per year to \$30,000 in straight commissions per year. But it was Father's burden to show that change in his income. See MacLafferty, 829 N.E.2d at 941. Thus, Father appeals from a negative judgment.

Father is employed as a salesman with an Indianapolis territory. Father's federal tax returns for 2002 through 2004 and his 2004 W-2 show that he earned \$70,761 in 2002, \$74,558 in 2003, and \$73,383 in 2004. And Father's paystubs from January and February 2005 show an annualized income of \$75,000. But Father and his employer testified that in November 2005 Father's income dropped dramatically, from a \$75,000 annual salary to straight commissions of approximately \$30,000 annually. The employer testified that Father was paid a salary for two years on the condition that he achieve certain sales goals, that Father failed to meet those goals, and that, as a result, the terms of Father's employment changed in November 2005, the end of the two-year period, to provide only for straight commissions as compensation. The employer estimated the monthly commissions to total \$30,000 annually.

The hearing on the motions to modify child support was held seven weeks after November 15, 2005, when Father testified that the terms of his compensation changed. But Father offered no documentary evidence to show that reduction in his income or to verify the terms of his employment before or after the two-year period that ended in

November 2005. Thus, the determination of Father's income rested entirely on the credibility of his testimony and that of his employer and the weight the trial court attributed to that testimony. As noted above, we defer to the trial court's judgment with regard to the credibility of witnesses. See MacLafferty, 829 N.E.2d at 941 ("we rely on the trial court's determination of the respective incomes of the parties, for example . . ."). We will not reweigh that evidence or assess the credibility of that testimony. See Staresnick, 830 N.E.2d at 131.

Demonstration of a reduction in Father's income was necessary to support Father's request to modify his child support obligation. See Ind. Code § 31-16-8-1. And there is evidence in the record to support the trial court's determination. We conclude that Father has not shown that the trial court abused its discretion when it determined his income for purposes of calculating Father's child support obligation. As a result, Father has failed to show either that there has been a substantial and continuing change in circumstances that would make the prior child support order unreasonable or that he has been ordered to pay an amount in child support that differs by more than twenty percent from the amount that would be ordered by applying the child support guidelines.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.